



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 16, 1975

The Honorable John C. Ross, Jr.
City Attorney
City of El Paso
Room 203, City-County Building
El Paso, Texas 79901

Open Records Decision No. 89

Re: Business list of customers
filed with city.

Dear Mr. Ross:

Pursuant to section 7 of the Open Records Act, article 6252-17a, V. T. C. S., you have requested our decision on whether a list of customers of waste disposal companies is excepted from disclosure by section 3(a)(10) of the Act.

An El Paso city ordinance requires waste disposal companies to file a list of customers with the Superintendent of Sanitation monthly. You have received a request by one company for the lists of all other companies. We presume that the companies treat this information as confidential and that if released the information would be useful to competitors, and our opinion is based on the accuracy of that presumption. Section 3(a)(10) excepts from disclosure information which consists of:

(10) trade secrets and commercial or financial
information obtained from a person and privileged
or confidential by statute or judicial decision. . . .

Texas had adopted the definition of "trade secret" contained in the Restatement of Torts, § 757 (b) (1939). Hyde Corporation v. Huffines, 314 S. W. 2d 763, 776 (Tex. Sup. 1958); Open Records Decision No. 50 (1974). The pertinent part of the definition provides:

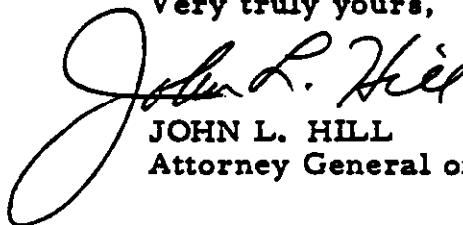
A trade secret may consist of any . . . compilation
of information which is used in one's business, and
while gives him opportunity to obtain an advantage
over competitors who do not know or use it. It
may be . . . a list of customers. . . . Id.

In West v. Pennyrich International, Inc., 447 S. W. 2d 771 (Tex. Civ. App. -- Waco 1969, no writ hist), the court said that a list of customers is within the definition adopted by the Texas Supreme Court in Hyde Corp. v. Huffines, *supra*. We do not believe that the mere filing of a list of customers with a city as required by city ordinance makes the list any less of a trade secret.

In light of these authorities, we believe it would be held that a list of customers obtained from a person by a city is a trade secret when it is treated as confidential by the company and where its release would be useful to competitors. Therefore it would be excepted from required disclosure under section 3(a)(10).

The requesting party also seeks to determine whether other companies have filed such reports. We do not believe any exception is applicable to information as to whether a report has been filed. See Attorney General Opinion H-223 (1974). This fact should be disclosed.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant
C. ROBERT HEATH, Chairman
Opinion Committee

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